

Initiative 960 – Relating to Taxes and Fees

Overview – In November 2007 voters approved Initiative 960, which reaffirms the two-thirds legislative vote requirement to raise taxes, and requires “prior legislative approval” of all fee increases. The measure requires the Office of Financial Management to provide a public notification process for all bills that increase taxes or fees, and a 10-year cost projection of the tax or fee increase. It requires that all bills that raise taxes appear on the ballot for a non-binding advisory vote unless placed on the ballot by the Legislature. The initiative requirements do not apply to local government taxes or governmental charges that are not taxes or fees (e.g., fines, penalties or charges for commercial transactions).

Accountability Measures – Under I-960, when bills that increase or create taxes or fees are introduced, OFM must prepare a 10-year projection of fiscal impacts, and must publicize this information to legislators, news media and the public, along with contact information for the legislators sponsoring the bills. When such a bill is scheduled for a committee hearing or voted out of committee, OFM must update and re-publicize the cost projection, along with committee members' contact information and votes on the bill. Likewise, when a bill passes off the floor of either chamber, OFM must update and re-publicize the cost projection, along with legislators' contact information and votes on the bill.

Tax Increases – I-960 did not change the two-thirds vote requirement for the Legislature to raise taxes that was originally enacted under I-601 in 1993. Rather, I-960 added language defining what constitutes “raising taxes” and the advisory ballot vote requirement. “Raises taxes” means any action or combination of actions by Legislature that increases state tax revenue, regardless of fund. (I-601 left it unclear whether its vote requirement for tax increases applied only to tax increases affecting accounts subject to the spending limit, or all tax increases.) It does not that appear a two-thirds vote is required if the tax increase measure is referred to voters for approval or rejection.

Fee Increases – Under state law prior to the passage of I-960 (I-601), only fee increases in excess of the fiscal growth factor required prior legislative approval. The fiscal growth factor is the statistical calculation used to set the state expenditure limit. Under I-601, it was the three-year rolling average of inflation and state population growth. Under the law as amended in 2006, it is the ten-year rolling average of state personal income growth.

Under I-960, all new fees or fee increases imposed by a state agency after December 6, 2007 require “prior legislative approval.” I-960 deleted the reference to percentage increases in excess of the fiscal growth factor. It also makes legislation containing fee increases subject to the public notification requirements in another part of the initiative.

“Prior legislative approval” is not specifically defined in I-960. Nor was it defined in I-601. Under I-601, the requirement for prior legislative approval of fee increases in excess of the fiscal growth factor was met through separate legislation, where fees were set in statute, or through sectional authorizations in the omnibus budget act. Increases in tuition and fees at the colleges and universities have traditionally been authorized in the budget act, as they are in the current biennium.

Fee Increases Enacted in 2008 – During the 2008 session, the Legislature enacted various new fees and fee increases, through the supplemental operating budget bill (HB 2687), the omnibus fee bill introduced late in session (HB 3381) and separate bills authorizing fees in statute. In total, the Legislature passed 14 bills imposing a new fee or increasing current fees. The 10-year cost projection of these new fees is about \$768 million. Almost two-thirds of this amount, however, was for higher education tuition and fees previously approved in the 2007 session through the 2007-09 omnibus appropriations act.

Below are the 14 bills that increased a tax or fee enacted in the 2008 session:

Bill	Type	10-Year Increase
1103	Background checks	3,563,100
1273	License filing	3,418,100
2674	Counselor credentials	6,605,000
2687	Various fees for University of Washington, Washington State University, Eastern Washington University, Central Washington University, Western Washington University, State Board for Community and Technical Colleges, Labor and Industries, Licensing, Health, Ecology and Agriculture	605,972,711
2778	Fingerprinting	3,276,420
2815	Emissions reporting	4,868,500
2878	Tolls for SR 167 and Tacoma Narrows bridge	40,921,000
3254	Ignition interlock license	33,553,969
3381	Various fees for Financial Institutions, Labor and Industries, Licensing, Health and Agriculture	53,084,088
5642	Cigarette certification	333,000
6439	Radiologic tech certification	87,000
6471	Mortgage lender license	7,817,076
6606	Home inspectors licensing	3,169,040
6799	Florists sales	1,730,000
Total		\$768,399,004

Issues and Outlook – During the 2008 session, Senate Democrats attempted to pass a liquor tax increase that would have funded additional DUI emphasis patrols and chemical dependency treatment programs. However, in response to a point of order, the Lt. Governor ruled that the bill must pass with a two-thirds vote to comply with the provisions of I-960. (Therefore the bill needed 33 votes to pass the Senate).

The Senate Majority Leader attempted to pass the bill, but it received only 25 “yes” votes. The Majority Leader then filed an emergency petition with the state Supreme Court asking the court to order the bill declared passed because it received a majority vote and was transmitted to the House.

The Supreme Court refused to intervene. Now, litigation is pending before the Supreme Court over the constitutionality of the two-thirds vote requirement to raise taxes. Oral argument will be scheduled this fall. The case will have major implications for the 2009 Legislature if bills are acted on that increase taxes.

There is also still some question as to how fee increases are handled under I-960. As “prior legislative approval” is not defined, it is not clear that the Legislature cannot meet the requirement the same way it did under I-601 – through legislation making statutory changes or through the omnibus budget act. The uncertainty about how the I-960 requirement must, or should, be met was reflected in the confusing history of HB 3381, which went through three drafts variously including and excluding certain fees, some of which had already been authorized by other legislation, before it went off the floor. The issue is likely to be revisited in the 2009 Session.